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**DEC 18 2006**

**OFFICE OF PETITIONS**

**DECISION ON PETITION**

**UNDER 37 CFR 1.137(b)**

In re Application of :  
Frederick Herz :  
Application No.: 09/024,278 :  
Filed: February 17, 1998 :  
For: BROADCAST DATA DISTRIBUTION SYSTEM :  
WITH ASYMMETRIC UPLINK/DOWNLINK :  
BANDWIDTHS :

This is a decision on the petition under 37 CFR 1.137(b), filed May 5, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed November 19, 2002, which set a shortened statutory period for reply of three (3) months. While a timely reply was filed on May 22, 2003 (reply was accompanied by petition for a three-month extension of time), that reply did not prima facie place this application in condition for allowance as indicated by the Advisory Action of July 02, 2003. A Notice of Appeal was not filed. Accordingly, by operation of law, the above-identified application became abandoned on May 20, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (RCE) and submission as required by 37 CFR 1.114; (2) the petition fee; (3) the required statement of unintentional delay have been received.

Regarding applicant's statement, the above-identified application has been abandoned for an extended period of time. The United States Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. At 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

Accordingly, the reply to the final Office action of November 19, 2002 is accepted as having been unintentionally delayed.

Application No.: 09/024,278

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The application is being referred to Technology Center AU 2611.

Telephone inquiries concerning this decision should be directed to the undersigned.

A handwritten signature in black ink, appearing to read 'D. Putonen', written in a cursive style.

Derek A. Putonen  
Attorney Advisor  
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